

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2790 OF 2007

Shri Bhajandas Tukaram Kadam

.. Applicant

vs

The State of Maharashtra ..

Respondent

Mr.P.B.Shah

for

Applicant

Ms.S.D.Shinde

A.P.P.for

Respondent

CORAM :

V.C.DAGA,

J

DATED :

31ST

AUGUST,

2007

P.C.

1. Heard learned counsel for the applicant and the

learned A.P.P.

2. The applicant is seeking bail in connection with C.R.No.53 of 2007 registered under sections 307, 324, 323, 147, 148 r/w 149 of IPC and subsequently under section 302 IPC in view of death of the deceased Baban Salunkhe who died in the hospital after two days.

3. The prosecution case in nutshell is as under :

On 15th July, 2007 complaint was lodged by Shri

Ramchandra Sambhjaji Salunkhe alleging that on the said date at about 8.30 a.m. when he was proceeding on his bicycle towards his house he reached near Ujani main canal near the field of one Dnyandeo Shankar Kadam accused Tukaram Shankar Kadam and six others including the present applicant started abusing the complainant on account of dispute of taking water from the common

well.

It is further alleged that the complainant was beaten by the accused persons and upon shouts of the complainant his family members came running to his rescue. However, they were also abused and assaulted by the accused persons. It is alleged that due to blow by stone given by the present applicant, Baban Dattu Salunkhe sustained serious injury and died while taking treatment. Accordingly, offence under section 302 of IPC came to be added.

The applicant states that the charge sheet in the aforesaid C.R.No.53 of 2007 came to be filed by the respondents before the learned J.M.F.C. The applicant further states that he filed Criminal Misc.Application No.221 of 2007 before the learned Additional Sessions Judge, Pandharpur for seeking bail in the aforesaid C.R. The learned Judge by common order dated 4th August, 2007 was pleased to reject the aforesaid Criminal Misc.Application No.221 of 2007 filed by the present applicant.

4. Learned counsel for the applicant submits that at this stage taking the story narrated in the FIR on the face of it will not make out a case under section 302 IPC. At the most, it could be a case under section 304 part II of IPC. He thus submitted that the applicant would be entitled for bail. He placed reliance on the judgment of the learned Single Judge of this Court in Criminal

Application No.930/1999, 1998 (3) LJ 171) wherein
 in a identical facts the accused were enlarged on
 bail by the Apex Court.

5. In the circumstances of the case, following the
 law laid down by the Apex Court, I am inclined to
 grant bail to the applicant subject to the
 following conditions:

(a) The applicant arrested in connection
 with C.R.No.53 of 2007 registered with
 Pandharpur Taluka police station shall be
 enlarged on bail in the sum of Rs.25,000/-
 with one or two local sureties to make up
 the said amount.

(b) The applicant shall report to the
 Pandharpur Taluka police station once in a
 week i.e. on every Monday between 3.00 to
 5.00 p.m. till conclusion of the trial.

(c) The order of bail will be given effect
 only after the applicant furnishes to the
 investigating officer the details about his
 place of residence and address where he
 proposes to stay after he is enlarged on
 bail. The applicant will not change his
 residential address thereafter till the
 conclusion of trial without prior intimation
 to the investigating officer.

(d) The applicant shall not directly or
 indirectly make any inducement or threat or
 pressurise any prosecution witnesses and
 shall not in any manner tamper with the
 prosecution evidence.

(e) The applicant shall co-operate with the
 investigating agency for disposal of the
 case. It is needless to mention that breach
 of any of the conditions by the applicant
 shall result in cancellation of bail.

(f) Any observations made in this order
 shall not be construed as finding or
 expression on merits of the case at the time
 of trial.

5. Application stands disposed of accordingly.

JUDGE